

Rail Safety Bill Signed into law by the President.

OCTOBER 16, 2008, WASHINGTON — President Bush signed into law the Rail Safety Improvement Act of 2008.

This is the most comprehensive rail safety bill in more than 30 years. The Senate passed the bill on October 1 by a 74-24 vote (Senator Barack Obama voted "yes," and Senator John McCain voted against the safety bill).

Chief among the bill's provisions is a mandate for railroads to install positive train control (PTC), a reduction in limbo time, a prohibition on carriers interfering with medical treatment of injured employees, and changes to the hours-of-service law. The hours-of-service law will now require minimum uninterrupted rest periods and require railroad contractors to comply with hours-of-service law provisions.

In addition, the bill emphasizes that the primary mission of the Federal Railroad Administration (FRA) is to ensure that safety is its highest priority. It also provides incentives for railroads to install electronically controlled pneumatic (ECP) brakes and switch position indicators.

The bill also creates a new high-level position within the agency of chief safety officer, adds 200 additional rail safety inspectors, and instructs the Department of Transportation (DOT) to develop a long-term strategy for improving rail safety. The bill must include an annual plan for reducing the number and rates of rail accidents, injuries and fatalities.

Following are the major provisions of the rail safety bill:

Training: Establishes minimum training standards for railroad workers; requires certification of conductors; and a study on certification of other classes and crafts of employees, including carmen and signal employees.

With regard to conductor certification, the FRA is to establish a program requiring certification of conductors with a requirement for minimum training standards within 18 months of enactment of this legislation.

Positive Train Control: Requires all Class I railroads and intercity passenger and commuter railroads to implement a PTC system by December 31, 2015, on all main-line track where intercity passenger railroads and commuter railroads operate, and where toxic-by-inhalation hazardous materials are transported. It also includes a grant program for the deployment of various PTC technologies, electronically controlled pneumatic brakes, rail integrity inspection and warning systems, switch position indicators, remote control power switch technologies, track integrity circuit technology, and other technologies.

Hours-of-Service Reform — *The new hours-of-service requirements are scheduled to become effective in nine months.* The reforms provide signal and train crews with additional rest, extend hours-of-service standards to railroad contractors, limit limbo time and require railroads to develop fatigue management plans through a mandatory risk reduction program.

Specifically, the hours-of-service law is amended to require at least 10 consecutive uninterrupted hours off-duty. Also, no freight railroad employee covered by the hours-of-service law may be called to work unless they have had at least 10 uninterrupted hours off, during the prior 24-hour period.

The provision that required the last hour of time spent returning from the final trouble call to be considered "off duty time" has been eliminated.

The hours-of-service, duty hours, and rest periods of signal employees shall be governed exclusively by the new rules. Signal employees operating motor vehicles shall not be subject to any hours-of-service rules, duty hours, or rest period rules that normally apply to operators of CDL-required vehicles.

Employers will be prohibited from disrupting an employee's rest by communicating with the signal employee during his or her minimum off-duty period of 10 consecutive hours.

The emergency provision that allows signal employees to remain on duty an additional four hours in an emergency situation. The amended language in the bill specifically prohibits the performance of "routine" work under the emergency provision.

Locomotive Cab Safety: Requires the FRA to complete a study on the impact of safety when personal electronic devices are in use by safety-related railroad employees during the performance of their duties. The study will also look at other elements of the locomotive cab environment that could harm the employee's health and safety. Based upon the results of the study, DOT may establish regulations on the use of personal electronic devices in the locomotive cab.

Medical Attention: Prohibits railroads from denying, delaying, or interfering with the medical or first aid treatment of injured workers, and from disciplining those workers that request treatment. Also requires railroads to arrange for immediate transport of injured workers to the nearest appropriate hospital.

Emergency Escape Breathing Apparatus: Requires emergency breathing apparatus for all crew members on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release.

Track Inspection Time: Requires the FRA to study track inspection procedures, including time intervals between inspection, repair priorities and methods, the speed of track inspection vehicles, and the territories inspectors must cover.

Toll-Free Number to Report Grade Crossing Problems: Requires railroads to establish and maintain a toll-free telephone number for reporting malfunctions of grade crossing signals, gates, other devices, and disabled vehicles blocking railroad tracks.

Sight Distance: Requires the FRA to develop model legislation to encourage states to adopt and enforce laws regarding overgrown vegetation, standing railroad equipment, and other obstructions at grade crossings, which can obstruct the view of approaching pedestrians and vehicles.

Accident and Incident Reporting: Requires that the FRA conduct periodic audits of railroads to ensure they are reporting all accidents and incidents to the National Accident Database.

National Crossing Inventory: Requires railroads to report information, including information about warning devices and signage, on grade crossings to enable the FRA to maintain an accurate inventory of such crossings.

State Action Plan: Requires DOT to identify, on an annual basis, the top 10 states that have had the most grade crossing collisions, and to work with the railroads to develop a state grade crossing action plan. The action plan will identify specific solutions for improving safety at grade crossings.

Emergency Grade Crossing Improvements: Establishes a grant program to provide emergency grade crossing safety improvements at locations where there has been a grade crossing collision involving a school bus or multiple injuries or fatalities.

Penalties for violations: Increases civil penalties for certain rail safety violations from \$10,000 to \$25,000. The minimum civil penalty remains \$500. For grossly negligent violations or a pattern of repeated violations, the maximum civil penalty is increased from \$20,000 under current law to not more than \$100,000. The bill also increases the maximum penalty for failing to file an accident or incident report from \$500 to \$2,500.

Enforcement Transparency: Requires that the FRA provide the public with an annual summary of all railroad enforcement actions taken by DOT.

Railroad Radio Monitoring: Authorizes the FRA to monitor certain railroad radio communications for the purpose of correcting safety problems and mitigating the likelihood of accidents or incidents.

Inspector Staffing: Increases the number of federal rail safety inspectors and support staff by 200.

Bridge Safety: Requires the FRA to issue regulations requiring each track owner to develop and maintain an accurate inventory of its railroad bridges; determine, and update as appropriate, the safe capacity of each bridge; maintain the original design documents of each bridge, if available, and a documentation of all repairs, modifications, and inspections of each bridge; enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities; conduct regular comprehensive inspections of each bridge; and designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indication of potential structural problems.

Solid Waste Processing Rail Facilities: Requires state governments protect their citizens against environmental hazards, such as noxious fumes, or leaks into groundwater, which could result from operation of a waste processing facility by a railroad.

Tunnel Information: Requires railroads to maintain certain information related to structural inspections and maintenance activities for tunnels, and requires railroads to provide periodic briefings to the government for the local jurisdictions in which the tunnels are located. This includes updates whenever a repair or rehabilitation projects alters the methods of ingress and egress into and out of the tunnels.